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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: September 22 , 2015

+ W.P.(C) 9126/2015 & C.M.Nos. 20753-54/2015

M/S HOTEL VASUNDHARA INN & ORS. Petitioners

Through: Mr. Akshay Chandra, Advocate

versus

EMPLOYEES STATE INSURANCE CORP. Respondent

Through: Mr. K.P. Mavi, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

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(ORAL)

Vide summons issued on 21st July, 2015 (*Annexure P-2*), petitioners have been summoned as defaulters under Sections 45-C to 45-I of *The Employees' State Insurance Act, 1948* (henceforth referred to as the '*The ESI Act*'), which requires petitioners to deposit ESI dues of ₹3,36,110/- with interest. The aforesaid summon (*Annexure P-2*) is impugned in this petition on the ground that without affording an opportunity of hearing to petitioners, the statutory appeal is dismissed on 26th February, 2013 on account of default on the part of petitioners to deposit amount of ₹2,52,038/-.

Learned counsel for petitioners submits that petitioners had already deposited ₹7,00,000/- with the authorities concerned and so, petitioners were under *bona fide* belief that there was no requirement of further

deposit of 50% of contribution and had expected that petitioners' appeal would be decided after putting petitioners to notice but it has not been done and there is violation of principle of natural justice and so, jurisdiction of this Court under Article 227 of Constitution of India is invoked.

At the hearing, learned counsel for petitioners had drawn attention of this Court to petitioners' Communication of 15th January, 2014 (*Annexure P-15*) to the Appellate Authority to point out that since liability of petitioners was nil, so 25% of contribution was not deposited but still petitioner had enclosed 25% of the purported demand and had sought hearing of statutory appeal on merits. It was submitted on behalf of petitioners that order under Section 45A of *The ESI Act* has been passed by the Assistant Director whereas in terms of Section 45A of *The ESI Act*, the authority competent to pass the assessment order is Regional Director and not Assistant Director and so, it is a fit case where the court ought to direct the Appellate Authority to decide petitioners' statutory appeal on merits.

Learned counsel for respondent opposes this petition by submitting that under Section 75 of *The ESI Act*, petitioners have to approach the ESI Court and so, this writ petition ought not be entertained. To submit that ESI Court is empowered to determine the contribution payable and to check the validity of the order of Appellate Authority, reliance was placed upon Apex Court's decision in *Employees' State Insurance Corporation Vs. F. Fibre Banglore (P) Ltd.* (1997) 1 SCC 625.

To controvert the jurisdictional issue, learned counsel for petitioners relies upon decision in *C.D. Securities Services Network Ltd.*

Vs. Employees State Insurance Corporation 2010 (4) AD (Delhi) 394.

Upon hearing and on perusal of the impugned summons, order of the Appellate Authority, material on record and the decisions cited, I find that to invoke Section 75 of *The ESI Act*, statutory appeal is to be decided on merits and not otherwise. Since petitioners' appeal has been dismissed at the threshold due to non-deposit of 25% of the contribution, therefore, on this limited aspect this petition is being entertained.

In the facts and circumstances of this case and while taking into consideration petitioners' Communication of 15th January, 2014 (*Annexure P-15*), wherein it is asserted that pre-deposit amount already stands deposited, I direct that without going into this aspect any further, let petitioners' appeal be decided on merits after affording an opportunity of personal hearing to petitioners. Considering that order under Section 45A of *The ESI Act* has been passed by the Assistant Director and not Regional Director, Appellate Court's order of 26th December, 2013 (*Annexure P-1 colly*) is hereby set aside with direction that petitioners' statutory appeal be heard and expeditiously decided on merits and till decision on petitioners' appeal, no coercive steps be taken against petitioners.

With aforesaid directions, this petition and applications are disposed of.

Dasti.

(SUNIL GAUR)
JUDGE

September 22, 2015

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